

**ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010**  
**COMMITTEE STATEMENT (CORRECTED)**  
**LB1048**

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**Hearing Date:** Wednesday February 24, 2010  
**Committee On:** Natural Resources  
**Introducer:** Natural Resources  
**One Liner:** Provide for approval and taxation of certain power generating facilities using wind as a fuel source

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

**Aye:** 8 Senators Carlson, Cook, Dubas, Fischer, Langemeier, McCoy, Schilz, Haar  
**Nay:**  
**Absent:**  
**Present Not Voting:**

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**Proponents:**

Senator Chris Langemeier  
Tim Texel  
Ron Asche  
  
David Levy  
  
Dave Malleck  
Gary Gates  
Jim Young  
Arthur Olsen  
Roger Lee McGowan  
Rick Larson  
Chuck Hasebrook  
Sherry Vinton  
Rick Boardman  
Ken Winston  
Clint Johannes  
Timothy McCoy  
Russell Zeeck  
Ron Steinbach  
Cory Worrell  
Nancy Packard  
Steve Boyer  
Tony Raimondo, Jr.  
  
Nathan Geisert  
Richard Endacott  
Dennis Houston  
Daniel Loomis

**Representing:**

Introducer  
Nebraska Power Review Board  
Nebraska Power Association, Nebraska Public Power District  
Midwest Wind Energy, Invenergy, Boyd Jones Construction  
Malleck Farm and Wind Venture LLC  
Omaha Public Power District  
Banner County Wind Energy Association LLC  
Center for Rural Affairs  
Nebraska Farm Bureau Federation  
Nebraska Aviation Trades Association  
Nebraska Sierra Club  
Nebraska Power Association, Nebraska Electric G & T  
Game and Parks Commission  
Next Step Biofuels  
Tri-State G & T  
Boone Central Public Schools  
League of Women Voters  
Third Planet Windpower LLC  
Behlen Manufacturing, Nebraska Energy Export Association  
Nebraska Energy Export Association  
Board of Educational Lands and Funds  
Norfolk Area Chamber of Commerce  
Loomis Farms

David Vavra  
Ron Lorenz  
John K. Hansen  
Andy Pollock  
Jeff Pursley  
Lyle Kathol  
Rich Lombardi  
Darrell Hayek  
Nicole Zalesky  
Scott Japp

Saline County Wind Association  
Saline County Wind Association  
Nebraska Farmers Union  
Nebraska Energy Export Association  
Nebraska Energy Export Association  
Northeast Community College  
American Wind Energy Association  
Saline County Wind Association  
Saline County Wind Association  
Self

**Opponents:**

**Representing:**

**Neutral:**

Bruce Rew

**Representing:**

Southwest Power Pool

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**Summary of purpose and/or changes:**

The intent of LB 1048 is to encourage and allow opportunities for private developers to develop, own, and operate renewable energy facilities for the export of wind energy from the state, while at the same time preserving the benefits Nebraskans receive as a result of the state's unique public power system. The bill would create a mechanism for the Nebraska Power Review Board to consider, and approve of, renewable energy facilities for the purpose of energy export. The bill also provides an exemption from public power's use of eminent domain for export projects, thus removing what is viewed as a significant barrier to greater wind energy development. In addition, the bill provides a new method for taxing projects that will benefit local communities and the developers by creating an alternative to the five-year accelerated depreciation of personal property schedule that is currently in place.

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**Explanation of amendments:**

Committee Amendment AM 2159 to LB 1048 replaces the bill:

Section 1 amends 13-518, which lists definitions under the Nebraska Budget Act, by clarifying that funds received from the nameplate capacity tax created in this amendment are not restricted funds.

Section 2 amends 70-1001, which contains a public power policy statement, by adding language that encourages and allows for the development of private renewable energy for export, but ensures that Nebraska's ratepayers are protected.

Section 3 amends 70-1001.01, which provides definitions, by adding a definition for "certified renewable export facility" as one that:

- \* generates electricity using solar, wind, biomass, or landfill gas;
  - \* will be constructed and owned by an entity other than a public power system;
  - \* has a power purchase or similar agreement with an initial term of ten years or more;
  - \* has a power purchase agreement with an initial term of 10 years or more for the sale of at least 90% of the output with a customer or customers located outside the state of Nebraska (excluding the 10% output purchase that public power may make);
  - \* maintains such an agreement for the life of the facility;
  - \* includes all generating equipment, access easement and interconnection equipment within the facility and connecting the facility to the transmission grid;
- and "stranded asset" is:
- \* a generation or transmission facility owned by an electric supplier which cannot earn a favorable economic return due to regulatory or legislative actions or changes in the market and, at the time of application, either exists or has been

approved by the board or the governing body of an electric supplier.

Section 4 amends 70-1013, which contains language dealing with the hearing process for applications for electric generation facilities and transmission lines; applications; hearing; appearances; objections and amendments in Article 10, Section 70 dealing the Nebraska Power Review Board. Also changes the time frame to hold a hearing from 30 days to 60 days and that for good cause the hearing could be scheduled up to 120 days from the filing of the application. The Board shall file its decision within 60 days.

Section 5 amends 70-1014, containing the "least cost" clause on which the Power Review Board is to base its approval, by excluding a certified renewable generation facility from having to meet the standard.

Section 6 creates new language that:

- \* Adds a definition for electric supplier applicable only to this section. Definition includes only public power systems;
- \* Provides conditional and final approval of a certified renewable export facility criteria for the Nebraska Power Review Board;
- \* Voids the approval if construction does not commence within 18 months unless good cause is shown;
- \* Requires reimbursement of costs not covered by a regional transmission organization tariff;
- \* Requires that electric suppliers serving loads greater than 50 MW be offered an option to purchase a pro rata share of up to 10% of a facility's output if it has a nameplate capacity of at least 80 MW;
- \* Sets application fee at \$5,000.00. Actual fee is based on actual cost. Provides for refund and the collection of additional funds to cover reasonable expenses. Allows for a hearing if there is an objection to the costs;
- \* Requires an applicant to establish decommissioning security at the tenth year after approval and to submit a decommissioning plan to the board. Requirement waived if local government has enacted decommissioning requirements.
- \* Provides an exemption from eminent domain by an electric supplier or other entity if the purpose would be to acquire the facility for electric generation or transmission;
- \* Authorizes the use of eminent domain by an electric supplier to acquire the lands rights necessary for the construction of transmission lines and related facilities for a certified renewable export facility. Deems such projects to be a public use;
- \* Provides that an electric supplier may be a party to a joint transmission development agreement for transmission facilities serving a certified renewable export facility if the transmission facilities cross the service area of any electric supplier owning transmission facilities of 115,000 volts or more and such electric supplier is deemed to be required to receive notice pursuant to section 70-1013; and
- \* Establishes a decertification process for certified renewable export facility. Also states that a facility may continue to operate during a decertification process before a final order is issued as long as electricity generated is sold to customers outside of Nebraska, or to electrical suppliers pursuant to a power purchase or similar agreement.

Section 7 amends 70-1014.01, relating to special general application approval, by providing the same exemption from eminent domain provided to certified renewable export facilities.

Section 8 creates new language providing for safety markings on "met towers" or wind measurement equipment so that low-flying aircraft operators can see them.

Section 9 amends 76-710.04, relating to eminent domain, by adding transmission lines to public projects that are exempted from the prohibition of the use of eminent domain for economic development purposes, and adds taking private property for a transmission line to serve a privately developed facility generating electricity using wind, solar, biomass, or landfill gas to the list of exemptions. Also clarifies that nothing in this section is to be construed to grant the power of eminent domain to private entities.

Section 10 amends 77-105, which defines tangible and intangible personal property, by defining all property used in the generation of electricity using wind as the fuel source as personal property to make it clear that no part of facility is real property.

Section 11 amends 77-202, relating to property tax exemptions, by exempting personal property used directly in the generation of electricity using wind as the fuel source.

Section 12 creates new language stating the Legislature's intent to levy a nameplate capacity tax to replace property taxes currently imposed on wind infrastructure and that the tax is not to be singled out for General Fund use in times of economic hardship.

Section 13 creates new language defining "commissioned" as a wind generation facility in which the turbine has been in commercial operation for at least 24 hours and connected to the electrical grid; "nameplate capacity" as the capacity of a wind turbine to generate electricity measured in megawatts; and "wind energy generation facility" as one that generates electricity using wind as the fuel source.

Section 14 creates new language that:

- \* Requires an annual payment of a nameplate capacity tax at a rate of \$3,518.00 per megawatt.
- \* Exempts wind energy generation facilities owned by public power or other entity and customer-generators.
- \* Clarifies taxes under this section are not to be construed to constitute restricted funds for the first five years after a facility is commissioned.
- \* Requires the Department of Revenue to collect the tax and to distribute such tax to the appropriate county treasurers within 30 days of receipt.
- \* Requires that the tax be imposed beginning the first calendar year the turbine is commissioned and provides that facilities commissioned prior to this act are to be taxed under the new system.

Section 15 creates new language requiring the county treasurer to distribute revenue received under this act to local taxing entities that would have received the personal property tax revenue that is currently collected and provides a calculation method.

Sections 16 and 17 assign placement of certain sections and repeal the original sections.

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Chris Langemeier, Chairperson